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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,860	08/27/2001	Lynnwood C. Cook	COOK 3.2	3207

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EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,860

Applicant(s)

COOK, LYNNWOOD C.

Examiner

Bethany L. Griles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5--15 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see paper 6, filed 10/24/03, with respect to the rejection(s) of claim(s) 1-18 under 35 USC 103 a in view of the Ivey Acres website have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the prior art cited below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-9, 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Clendinning et al. (US3919163).

4. Regarding claim 1, Clendinning et al. disclose a biodegradable plant shell that integrally incorporates its own growing media (col 3, lines 18-21); comprising a peripheral wall (col 11, lines 38-40), having a hollow interior in which a plant is inserted, the wall having a substantial thickness and being formed of biodegradable constituents (col 3, lines 11-12) including a particulate organic base material (col 11, line 39) and a water responsive glue (col 2, line 56), the shell being molded with sufficient porosity to permit root and water penetration into the walls of the shell (col 2, lines 15-20), the glue

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being such that it causes the shell to retain its shape for storage and handling but permits the shell to disintegrate rapidly in the presence of water so as to facilitate root penetration (col 19, line 30).

5. Regarding claim 2, Clendinning et al. disclose the major portion of the shell comprises the organic base material (col 19, lines 20-23) in combination with organic ingredients that enhance water retention capabilities of the shell and time release nutrients (col 3, line 19) in effective amounts to support initial plant development after a plant has been planted in the shell.

6. Regarding claim 3, Clendinning et al. disclose that the shell ingredients are compressed together sufficiently that the shell holds its shape when dry but is sufficiently porous that the shell permits root and water permeation therethrough (col 9, lines 51-65) but has substantial water retention capabilities.

7. Regarding claim 6, Clendinning et al. disclose that the shell includes a time-release fertilizer in that as the shell itself biodegrades, it releases nutrients into the soil over a period of time (col 12, line 21).

8. Regarding claim 7, Clendinning et al. disclose that the shell is shaped such that it fits into standard size temporary plant pot of the type that are used by nurseries (col 19, lines 5-20).

9. Regarding claim 8, Clendinning et al. disclose that the shell has a standard size interior recess shaped such that certain standard size temporary plastic pots will fit inside the shell (col 11, lines 35-40).

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10. Regarding claim 9, Clendinning et al. disclose that the shell contains sufficient nutrients and water retention characteristics that the shell provides a desirable nutrition and water retention environment while a new plant is becoming established in a new environment (col 12, lines 5-20).

11. Regarding claim 11, Clendinning et al. disclose that the shell components are compressed in a mold at a pressure such that the shell walls are stable when dry (col 19, lines 5-30) but the shell walls are sufficiently porous to permit water and root permeation into the walls of the shell, such that the shell structure breaks down substantially within a month.

12. Regarding claim 12, Clendinning et al. disclose that the shell is integrally molded in the presence of the glue under a pressure that is low enough that the shell retains sufficient porosity that water will permeate the shell when applied to a plant that is planted in the shell, the shell being formed from components and compressed at a pressure that is such that the shell retains at least about 20% of the water applied to it (col 11, lines 50-60).

13. Regarding claim 13, Clendinning et al. disclose that the water retention capability is 30-40%, as the added peat moss and vermiculite have a high water retention capability (Col 12, line 9 and col 19, line 23).

14. Regarding claim 14, Clendinning et al. disclose a biodegradable plant shell comprising a peripheral wall having a hollow interior into which a plant is inserted (col 11, line 38) the wall having substantial thickness and being formed of biodegradable constituents including a particulate organic base material along with natural or synthetic

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nutrients dispersed within (col 12, lines 5-20), the base material and nutrients and thickness of the wall of the shell being sufficient to provide nutrition for the plant while the plant roots are becoming established (col 11, lines 61-68), the constituents of the shell being sized, admixed, and molded such that the shell retains a substantial amount of water yet is sufficiently porous to readily permit water and root penetration throughout the walls of the shell (col 12, lines 50-55), the shell constituents being held together by a tackifying agent or glue (col 10, line 65- col 11, line 6), the tackifying agent or glue serving effectively as a water based glue that causes the shell to retain its shape for storage and handling (col 11, line 50) but permitting the shell to disintegrate rapidly in the presence of water so as to facilitate root penetration through the wall and facilitate plant use of the water and nutrients retained in the shell (col 19, line 29).

15. Regarding claim 15, Clendinning et al. disclose a biodegradable plant shell comprising a mixture of components including a base material comprising one or a combination of shredded pine bark and rice hulls (col 12, lines 25-30), in combination with one or more elements selected from the group consisting of peat moss, manure, top soil, and time-release nutrients (col 12, line 21), held together by a water soluble tackifier or glue with the components being mixed and compressed in the shape of a plant pot (col 11, line 38) having relatively thick walls, the walls being compressed sufficiently that the shell retains its shape when dry (the walls being sufficiently porous to permit root and water permeation during plant development while still having substantial water retention capabilities, the walls being subject to rapid deterioration in the presence of moisture (col 12, lines 50-56).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 5, 10, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clendinning et al. (US 3919163).

18. Regarding claim 5, Clendinning et al. disclose that the shell includes effective quantities of peat moss and topsoil and fertilizer (col 19, lines 5-20).

19. Clendinning does not disclose that the shell includes manure.

20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use manure as a fertilizer, as it is notoriously well known in the art to use manure to fertilize crops.

21. Regarding claim 10, Clendinning et al. disclose a tackifying agent.

22. Clendinning et al. do not disclose that the glue is guar gum, cornstarch, or a combination thereof.

23. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use guar gum or corn starch as a glue, as these are well known components of many glues and adhesives, and it would be an obvious matter of design choice to use these ingredients in glue.

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24. Regarding claim 19, Clendinning et al. disclose the use of particulate organic material (col 12, line 6)

25. Clendinning et al. do not disclose that the size of the particulate matter is no greater than $\frac{1}{4}$ inch in diameter.

26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the diameter of the organic particulate matter of a dimension which would remain in the pore spaces, but be small enough to have a large surface area to release its nutrients to the adjacent seed or plant.

Allowable Subject Matter

27. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-18 are allowed.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clendinning et al. US3923729; Clendinning et al. US3921333; Oglesby USD397315.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is

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703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.



blg

Bethany L. Griles
Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600